

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SAUNDRA DEE SALDANA,

PLAINTIFF,

CASE NO. 3:19-CV-2127-B-BK

v.

COMMISSIONER OF THE SOCIAL
SECURITY ADMINISTRATION,

ORDER ACCEPTING FINDINGS, RECOMMENDATIONS, AND CONCLUSIONS
OF THE UNITED STATES MAGISTRATE JUDGE


United States Magistrate Judge Renée Harris Toliver made findings, conclusions and a recommendation in this case. Plaintiff filed objections, and the District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. For the following reasons, the objections are overruled, and the Court accepts the Findings, Conclusions and Recommendation of the United States Magistrate Judge.

As to Issue 1 - the ALJ's failure to follow SSR 12-2p - this is, essentially, a *Stone*-type error and the Court concludes that the ALJ's failure to cite to the rule was harmless. Put another way, the ALJ's failure to find that Plaintiff's fibromyalgia was a medically determinable impairment did not prejudice her because the ALJ discussed in significant detail all of Plaintiff's fibromyalgia symptoms in determining her residual functional capacity (neck and back pain, positive tender points, neuropathy, insomnia, IBS, and the like). Thus, contrary to Plaintiff's argument, the ALJ's "entire consideration" of her fibromyalgia was not contained in "a short one paragraph discussion." Under these circumstances, Plaintiff has not shown that the ALJ's applying SSR 12-2p could have led to

a different decision. Admittedly, this case was unusual in that the ALJ indicated at the hearing that he was leaning toward awarding benefits, but apparently changed his mind upon giving it more thought; however, this suggests a more thorough review of the evidence, rather than less.

As to Issue 2 - the effects of Plaintiff's pain - she argues that the record demonstrates that her pain is "constant, unremitting, and wholly unresponsive to therapeutic treatment." Plaintiff testified, however, that heat and medication helped alleviate the pain. She also requested, on more than one occasion, a specific steroid injection from her treating physician, saying that it had been effective. Additionally, in physical examinations, Plaintiff generally exhibited no limitations in strength, range of motion, or reflexes and she reported either no difficulty or only minor difficulty with her activities of daily living, with the exception of working. In light of the applicable standard of review, the ALJ's decision is supported by substantial evidence. See *Greenspan v. Shalala*, 38 F.3d 232, 236 (5th Cir. 1994).

SO ORDERED this 20th day of August, 2020.



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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**COMMISSIONER OF THE SOCIAL
SECURITY ADMINISTRATION,**

JUDGMENT

This action came on for consideration by the court, and the issues having been duly considered and a decision duly rendered,

It is ORDERED, ADJUDGED, AND DECREED that the decision of the Commissioner is AFFIRMED.

IT IS FURTHER ORDERED that the Clerk shall transmit a true copy of this judgment and the order accepting the Findings, Conclusions and Recommendation of the United States Magistrate Judge to counsel for the parties.

SIGNED this _____ day of _____, 2020.

UNITED STATES DISTRICT JUDGE